PRINCIPLES UNDERLYING THE SUITABLE-WORK DISQUALIFICATION

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11/26/45

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PRINCIPLES UNDERLYING THE SUITABLE-WORK DISQUALIFICATION

Foreword

This is a statement of the thinkings and conclusions of technicians in the Bureau of Employment Security concerning the principles and the application of the suitable-work refusal disqualification. This is a discussion of the basic principle; rather than of common factual situations. But the discussion is concrete enough, we hope, to make application to particular cases readily possible.

The general plan of this discussion is, first, to cover general items of significance in connection with the disqualification, then, a general discussion of the criteria common to all State laws with regard to work refusals, and, lastly, a lengthier discussion of the particular criteria which most of the agencies are bound by law to consider in determining suitability of work and good cause for work refusals.

The views expressed in this statement are primarily those of the technical staff of the Interpretation Service Section of the Bureau of Employment Security. Although the statements contained herein are not official opinions of the Social Security Board, the Board is in general agreement.

I . INTRODUCTION

A. General

When the worker files a claim for benefits, he must also register for work with the United States Employment Service. Each time he refuses a job, the Employment Service sends the information on to the unemployment compensation agency. It is at this point, when the unemployment compensation agency must make a decision whether the worker's refusal of the job means he will or will not get benefits, that the principles and policies here outlined and suggested come into play.

Purpose of the Suitable-Work Disqualification.- The work-refusal disqualification is intended to prevent payment of benefits to workers voluntarily unemployed because they are not willing to accept work. To avoid depressing labor standards and working hardships on claimants, this is generally qualified by the requirement that the offered work be "suitable" and that the claimant have refused it without good cause.

Responsibilities of the Employment Service.--The nature of the unemployment compensation system and of the work-refusal disqualification presupposes a systematic method of exposing claimants to suitable job offers. Hence, the provision in all laws that claimants who have not

registered for work with a public employment service office are not eligible for benefits.

The suitable-work provisions are generally applicable as well to job offers not made directly through the employment service. Thus, offers of work may be made directly to the claimant by employers. And, union locals often have arrangements with the public employment service permitting them to refer their members to work without having to go through United States Employment Service channels.

Most workers will look for jobs themselves, although most State laws do not specifically place the responsibility upon the claimant himself for making an independent search for work. In the main, responsibility for referring workers to job opportunities falls upon the employment service.

Agency Responsibilities.--The employment service is generally familiar with current labor market conditions, and is generally qualified to refer the worker to that job open at the moment for which his skills most closely fit him. But, if the claimant refuses the referral, the unemployment compensation agency has the responsibility of applying its own criteria to determine whether the claimant refused suitable work without good cause. These criteria are generally not identical with those the employment service used when referring the worker to the job.

B. Offer and Referral Process

Introduction.--The setting in which offers and referrals take place can be seen from two points of view--the agency's and the claimant's. The agency has the problem of deciding whether the work which the worker refused was suitable and whether he had good cause for his refusal. In fact, both the employment service and unemployment compensation agency are involved. They are two integral units, each applying its own criteria, and subject to its own purposes, but correlating activities with those of the other. On the other hand, a worker who registers with the employment service is generally attempting to get the best job he can. Although the typical worker will not forego a job to receive unemployment compensation, he will not necessarily accept the first job offered to him if he believes he has good reason for holding out for a more favorable job. More often than not, he believes he is bargaining with the employment service for a better referral. Against this background, we will discuss offers and referrals.

Distinction Between Offers and Referrals.--An offer is made by the employer himself or by one having authority to hire for him. A referral is made by the employment service or some other organization which may not hire the worker for the employer but may send the worker to the employer to be considered for employment. Even if the worker has accepted the referral, he cannot get the job until he applies to the employer for it. A refusal to accept an offer made directly by the employer, a refusal to accept a referral to work, or after acceptance of the referral, a refusal to apply to the employer for work, may gives rise to the need to determine whether a disqualification should be imposed.

Characteristics of Proper Offers and Referrals.--So that the claimants willingness to accept a

particular job can be more accurately measured, the claimant should be aware of the fact that he is being offered a job and he should be told the essential facts of the job. Offers and referrals, therefore, have certain characteristics.

1. Being proposals, they should be definite and clear. The offer or referral should include in understandable language all the important facts concerning the job, such as the exact nature of the work, the wage rates, the hours of work, its location, overtime and overtime pay, conditions of work, equipment needed, educational and experience requirements, etc.

2. The referral or offer should be made directly to the claimant. This may be done either in person or by mail, although personal communication is much more desirable. Communications by mail or over the telephone more often raise questions about the worker's understanding of the terms of the offer or referral. Such communications sometimes involve determining whether the work, actually received the offer or referral.

3. The worker should be aware of the fact that an offer or referral is being made, and that he is not engaging in a mere discussion of job opportunities or possibilities.

4. The job in question should be vacant. Many laws require that offers of or referrals to suitable work be confined to that work which is "available." This generally means that the job must be one which is actually open to the claimant either at the time the offer or referral is made or in the very near future.

Characteristics of a Refusal of an Offer or Referral.--Before the question arises a to whether the claimant should be disqualified for refusing suitable work without good cause arises, it must be clear that he has definitely refused the offer or referral.

1. A statement by the worker, that he will need time to "think it over" may constitute a refusal of the work, depending upon the circumstances. Thus there should be little or no time needed for the worker to determine whether he will accept a job which does not differ from his customary employment; but the worker may need a substantial time to think over acceptance of a job which entails his moving to another community at considerable expense to himself.

2. A statement of preference by the worker for a specific type of work is generally not a refusal of other work. An attempt by the worker to get better, terms or a more desirable referral without a rejection of the job offer should not be considered a refusal. Effort should be made to make the rejection or acceptance of a job as definite as possible.

3. After acceptance of the referral, the claimant may indicate by his actions that he did not accept in good faith. He may, for example, fail without good cause to apply for the job, or his attitude and statements to the employer may clearly imply that he is not applying for the job in good faith. Such indications, however, should be clear and definite before the claimant is considered to have refused an offer or referral. Sometimes it is clear that the

claimant would find a job acceptable to him, despite his objections, if he were to try it out. Before, however, a refusal to accept a referral or offer under such circumstances will result in disqualification it should be clear that the job is suitable for the claimant.

C. Imposing the Disqualification

General.--When the agency determines whether or not the claimant refused suitable work without good cause it does so after the event. There is no one working for the unemployment compensation agency who was present at the time the worker received the offer or referral from the employment service, who was able to listen personally to the worker's arguments, watch his demeanor, and the like. The agency therefore gets its information second-hand. In agencies with central office determinations, all decisions are based upon written information. The contents of such reports and comments on the process of finding the facts are, however, outside the scope of this material. Some of the broad principles involved in applying the law (rather than to the process of getting facts to which the law is to be applied) are discussed below.

Disqualification During Period of Ineligibility.--Shall a worker who is unavailable for work or who has not made a claim for benefits be disqualified when he refuses suitable work without good cause? A number of State laws, and the practice of many States, prohibit disqualifying a worker under such circumstances. But, the language in most State laws does not specifically prohibit disqualification of ineligible workers for refusing work without good cause. However, a number of arguments can be made against this practice.

1. Before the worker claims benefits, he is outside the unemployment compensation system, and not subject to it except when, as in voluntarily leaving work, he has initially caused his unemployment without good cause.

2. If a substantial period has elapsed between the refusal and the filing of a claim, it is very doubtful whether the refusal can truthfully be said to be causing the worker's unemployment when he files his claim. A disqualification in such cases, especially one involving a reduction in the benefit amount, is a penalty rather than a denial of benefits during a period of unemployment due to the workers fault.

3. In the known cases of work refusals, lapse of time may have made evidence and witnesses difficult to obtain and facts hard to recall.

4. Moreover, many cases never come to the agency's attention. In order to avoid disqualification, workers will tend to avoid channels of work offers, such as the employment service, which are connected with the unemployment compensation agency.

It is preferable, therefore, to apply the disqualification only to refusals of work after a claim for benefits is made and claimant is otherwise eligible.

Burden of Agency to Consider all Facts and Reasons for Work Refusals.--The determination should be based on all the competent evidence before the agency, which should, get a complete

report from the employment service about the job and the refusal and a full statement from the claimant as to his reasons for refusing the offer or referral. Claimants, however, may fail to raise certain objections to the job because of ignorance of the law or conditions of the work or because of inability to grasp the significance of the law or working conditions. If the facts themselves, therefore, or other information in the possession of the agency, would provide sufficient ground for objection by the claimant if he were aware of the significance of such fact or information, the agency should consider them in its determination. Thus, a worker may refuse a job only because of risk to his health. If the evidence or other information in the possession of the agency indicates that the wages paid are less than those prevailing for similar work in the locality, that should be considered in the determination, regardless of the workers failing to raise that issue.

II. GENERAL CRITERIA

A. Introduction

All State laws contain at least three general standards equally applicable to all cases. Most State laws, in addition, contain other factors whose weight may vary with each case. These include the provisions in State laws specifying the elements to be considered before the imposition of a disqualification. They are considered in section III below.

The general, fixed, standards include the provisions of State laws enacted to conform with section 1603(a)(5) of the Federal Unemployment Tax Act.

The opinions expressed herein with regard to the State provisions conforming with section 1603(a)(5) of the Federal Unemployment Tax Act are not formal opinions of the Social Security Board. They are statements of preferable interpretations of these provisions. Other interpretations may be equally reasonable.

The Standards.--All State laws provide that no benefits shall be denied for a refusal to accept new work (and many State laws provide in addition that no work shall be suitable), (a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individuals than those prevailing for similar work in the locality; (c) if as a condition of being employed the individual would be required to join a company union or resign from or refrain from joining any bona fide labor organization.

Purpose.--These standards are intended to prevent pressure upon workers to take work vacant directly due to a labor dispute, or substantially below prevailing working conditions, or to prevent interference with his freedom of association. The standards apply to all denials of benefits for failure to accept new work, whether or not the issue involved is one ordinarily considered under the work-refusal disqualification. Thus, the claimant may riot be held unavailable for work for having refused to accept new work under one of the three above-specified circumstances.

"No work."--Those laws, which provide that any work which does not meet the above-specified

conditions shall not be suitable, afford broader protection. They apply the three standards to any work whether or not it is "new work."

"New work."--The phrase "new work" refers to any work involving a new relationship to an employer. This clearly covers jobs involving new employers and different establishments. Moreover, even where the former employer is offering the claimant his old job, if a substantial period has elapsed between the separation from the job and the offer, the job is covered by the term "new work." The phrase may even be applicable to transfers to different types of work while the claimant is working for the same employer, if the circumstances indicate that the old employer-employee relationship is terminated and a new relationship is contemplated.

B. The Standard Protecting Workers During Labor Disputes

The first general protection in the State laws declare benefits cannot be denied if the claimant refuses new work in which the position offered is "vacant due directly to a strike, lockout, or other labor dispute."

Meaning of "Labor Dispute."--The term "labor dispute" is not defined in the Social Security Act. A number of State agencies, and at least one unemployment compensation law, define "labor dispute" to include the following:

> "Any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the relation of employer and employee."

This definition is similar to that in the Norris-LaGuardia Act (1932), the National Labor Relations Act (1935), and the anti-injunction laws of a number of States. The definition is also similar to that used by the United States Employment Service in administering the Wagner-Peyser provision that workers shall not be referred to situations vacant due to a labor dispute.

Comparison With Labor-Disputes Disqualification.---This provision applies to workers who are being offered jobs with an employer engaged in a labor dispute. In addition, all State laws disqualify workers, who are unemployed, under certain circumstances during a labor dispute involving their employer. A comparison between these two provisions is important. Since the refusal of work provision is a protection from disqualification to prevent the worker from being pressured into a job vacant because of a labor dispute, it should be broadly interpreted in favor of the claimant. At the same time, it is desirable to administer the labor-dispute disqualification and the refusal-of-work provision so that the term "labor dispute" will mean the same in the application of both. In general, the problems involved in applying the term "labor dispute" and in determining the beginning and ending date of a labor dispute are similar under both types of provisions. Further, it is best to avoid the seeming contradiction of defining labor dispute under one section so as to disqualify workers for refusing work because a labor dispute is not found to exist and at the same time in the same dispute to disqualify other workers under

another section because their unemployment is found to be due to the existence of a labor dispute.

However, where the precise language differs, as, for example, in a provision disqualifying workers for unemployment due to a "strike," the meaning of "labor dispute" in the refusal-of-work provision cannot be thus limited. Many State laws disqualify claimants unemployed because of a labor dispute only if the labor dispute has given rise to a "stoppage of work." The refusal-of-work standard, however, refers to a "labor dispute" but does not require that there be a stoppage of work during the dispute. Therefore, whether or not a stoppage of work exists a t the establishment, an offer of work in a job which is vacant because of the dispute cannot result in a disqualification if the claimant refuses the job.

The Vacancy.--Some difficulty may arise in determining whether the position offered or vacant is due directly to a labor dispute. The phrase "due directly" is based on the idea of a causal relationship between the vacancy and the dispute not interrupted by the intervention of another factor. The following are illustrative of vacancies due directly to a labor dispute:

1. Vacancies in the positions of the workers participating in the dispute.

2. Vacancies due to the fact that the work of those participating in the dispute and that of other employees are so integrated that when one group becomes unemployed because of the dispute the other cannot continue to work.

3. Vacancies created by the fact that the workers are not permitted to work by those participating in the dispute.

4. Vacancies due to the fact that the employer, because of the dispute, reorganizes the establishment or introduces technical improvements so that the actual positions described in 1, 2, and 3, even though changed, can be identified.

5. Vacancies in newly created jobs, unfilled at the beginning of the dispute, if they are similar to 1, 2, 3, and 4 above.

The employer may offer their old positions or similar positions to the workers participating in the dispute. If the statute says that "no work" shall be suitable if the job is vacant due directly to a labor dispute, then, of course, the workers, may not be disqualified for refusing. But, if the statute is not so broad, difficulty may arise; this question is discussed in section III H below.

C. The Prevailing-Working-Conditions Standard

The second statutory standard refers to refusal to accept work with regard to which the wages, hours, or other conditions are substantially less favorable to the individual than those prevailing for similar work in the locality.

Contrast With Other Statutes.--This provision should be distinguished from similar provisions in

other acts referring to prevailing wages or prevailing minimum wages. The distinction in general stems from the different purposes of such acts, and the nature of the work covered. For example, the Walsh-Healy Act, governing contracts with the Federal Government, is apparently intended to avoid unfair competition among employers in different parts of the country due to undercutting of wages. Determinations made under this act apply to large geographical areas; they are not concerned with the wages of any particular individual, but merely establish the lowest wage to be paid in specified areas under contracts with the Federal Government. By contrast, our statutory standard protects the claimant from disqualification for refusal to accept substandard conditions. It focuses attention not only on conditions generally prevailing in the industry or locality but also on whether the working conditions are more or less favorable to the particular worker.

In this comparison with other jobs, data on wages and related conditions of work gathered by other organizations, governmental and private, may be of value. Such data, however, are subject to limitations because they were not gathered expressly for unemployment compensation purposes. Thus, they may not conform to the agency's interpretation of this particular provision.

"Substantially Less Favorable."--There has been little occasion in the benefit appeal cases to define the phrase, "substantially less favorable," as used in this provision. It may seem easiest to fix a percentage of prevailing wages, so that any wage below that percentage is substantially less favorable to the worker. But, such a solution is not equitable; a small percentage reduction in a low wage may be much less favorable than a similar percentage in a higher wage rate. Moreover, differences in hours and other working conditions are measureable on a qualitative and not a quantitative basis.

In general, working conditions may be found "substantially less favorable" than those prevailing for similar work in the locality in either of two ways. Any particular conditions, such as wages or hours, may be so much less favorable to the claimant that it would be termed "substantially less favorable"; on the other hand, the combined effect of all the conditions of work taken together may be substantially less favorable to the worker than those prevailing for him elsewhere for similar work in the locality. But the comparison must always be made with the particular individual concerned in mind.

"Locality."--The first question which arises in applying the prevailing-working-condition standard concerns "locality." This team has been variously defined as a large geographical area, a political division, or an industrial area. Any definition or interpretation of "locality," however adopted for unemployment compensation purposes should bear in mind that its purpose is to protect the claimant from denial of benefits for refusal to take work which is substantially less favorable to him than that which, he can get elsewhere. In other words, a homogeneous industrial area would appear to be the "locality" for the purposes of this provision.

Workers with certain skills generally look for work in limited geographical areas. The size of this area will depend upon, the customs and habits of the community and of the workers in the occupation. These are largely determined by the industrial set-up. Thus we may find that the workers generally seek work in their skill in either of two cities and freely move between the two. For other skills, the workers may seek work within large geographical areas, such as,

along the coast, or the midwest farm belt, etc. In view of these work habits, the term "locality" for the purposes of this subsection may be said to include the geographical industrial area in which the work is located and in which workers with skills similar to those required on the job regularly seek "similar work." Thus, the word "locality" is determined not by the residence of the individual worker, nor the location of the particular establishment in which the work is being offered, but primarily by the work habits of the workers in the area in which the work is located.

"Similar Work."--"Similar work" may be determined in a number of ways: e.g., by wage classification, by the United States Employment Service code classification, or broad colloquial classification, such as accounts, machinists, etc. Aside from the broad skills involved, customs and work habits individual trades or industries, quality of skill, clientele to be served, etc., create characteristics of work important. to the worker. Since workers will generally tend to seek work meeting the characteristics of the work they have usually done, these characteristics help in applying the phrase "similar work." In borderline cases, these characteristics may be looked to distinguish one type of work from another to find that which is "similar." For example, although carpenters in a factory and carpenters in a department store apparently perform similar work, the requirements of the particular establishment in which they work may create differences not only in the skill required on the job, but the application of such skill. Thus one may be classed a construction carpenter, and the other a repair carpenter. It may be proper, therefore, in determining the wages paid for carpentry in department stores, to limit the basis for comparison to wages paid in department stores but not to compare the wages offered with those paid for carpentry in shoe factories. This does not preclude, however, comparisons of wage rates among industries or parts of industries where the same skills are involved and the actual work done is much the same. In distinguishing in this way between one job and another the distinctions should not be so fine as to lead to a comparision of "identical work."

Prevailing Wages.--The wages must not be substantially less favorable to the individual than those prevailing for similar work in the locality.

1. The term "wages" generally refers to the piece or time rate, rather than to the total wages paid. The worker's total wage is usually the product of the wage rate, and the time worked, which may include overtime. But, the law specifically refers to a comparison of the hours to be worked on the job offered with those prevailing for similar work in the locality. The term "wages" therefore usually means the rate, including straight and overtime rate, although often the "earnings" as distinguished from "rate" need to be considered.

2. The actual "prevailing" wages may be higher or lower than the applicable Federal or State minimum wage. However, wages below either the Federal or State minimum, or both, may be presumed to be "substantially less favorable" to the worker. The mere fact that the wage meets the legal minimum does not necessarily imply that it is the prevailing wage. Federal or State minima merely set the floor below which wages may not legally go.

3. Determination of the prevailing wage involves, first, discovery of the actual wages currently paid for similar work, and secondly, a decision based on all the available evidence. The experience and knowledge of Employment Service, data from other Federal and State

agencies, the experience of local labor and employer groups may be helpful in gathering and evaluating the evidence. Where such work is generally done in the locality under union conditions, the union rate may well be said to be that prevailing.

For many types of jobs, it may be possible to construct tables of prevailing wages which will be useful over substantial periods. For other jobs, the wages may vary over short periods to such an extent that this would be impracticable. In this connection, the agency may find helpful the data collected by such Government agencies as the Department of Labor. For example, the basic occupational wage rate data compiled by the Bureau of Labor Statistics sets out, among other facts, the average hourly wages paid for certain occupations, the high and the low establishment averages for each occupation, and in some cases, the number of workers at each level of wages in each occupation. Such data may be used with the caution that they may need modification to bring then into line with the unemployment compensation agency's own interpretation of this standard.

4. If the various wage rates paid are averaged to produce the "prevailing" wage rate, the result may often be an artificial figure. It seems more realistic to apply an actual rate rather than an artificial amount in determining whether the wage offered is substantially less favorable to the claimant. This can be achieved in several ways: by using the rate received by the greatest number of workers in such employment, by weighting the average by the number of workers receiving such given rate, or by utilizing the rate paid by the largest number of employers. The first two methods or a combination of the two are most frequently used. Traditionally, economists and Government agencies which have had to apply the term "prevailing" have applied it to the wage paid to the largest number of workers rather than the rate paid by the largest number of employers. That would appear to be the preferable base for determining the prevailing wage.

Implied in this usage is the concept that the prevailing rate is a specific wage and not a range of wages. Wherever possible, use of a wage range rather than a specific figure is best avoided.

Prevailing Hours.--The hours of work must not be substantially less favorable to the individual than those prevailing for similar work in the locality.

1. Here again the question arises as to the relation between this standard and the maximum work week set up under applicable State or Federal laws. It may be presumed that if the hours required are above the ceiling, the work would be less favorable to the claimant than those prevailing in the locality. The customary and prevailing work week for similar work in the locality, however, may be less than the maximum week legally permissible.

2. Determination of the prevailing hours first involves discovery of the actual hours currently worked in similar work, and second, a decision on all the available evidence. The experience and knowledge of the Employment Service, data from other Federal and State agencies, experience and methods of unions, evidence from workers and employers, will all be of value.

3. The prevailing hours worked for the similar work most probably should be an actual hour rather than an artificial figure. At least two alternatives exist for arriving at the prevailing number of hours of work per day or week. One is the number of hours customarily worked in the largest number of establishments in the locality; the other is the number of hours worked by the largest number of workers. The latter would seen to be the preferable base.

4. With but two exceptions, comparison of hours worked in one job with hours in similar jobs for the largest number of workers should be based on only the normal work day. (a) If overtime is usual and customary for the majority of workers performing similar work in the locality so that the final earnings are materially affected, the amount of overtime probably required on an offered job will need to be compared to that prevailing for other jobs. (b) The second exception concerns job offers in which the weekly hours may frequently be substantially less than those in other similar jobs in the locality so that the claimant's earnings will be seriously reduced. If it is foreseeable at the time of the offer that the hours of work will be substantially less than those worked in other similar jobs so that the earnings will be substantially reduced, the work would appear to be substantially less favorable to the claimant. The task of determining the hours to be worked in the future may be difficult, especially in the construction trade in which the hours depend upon a number of unforeseeable factors. But some guide may be found in comparisons of the actual hours worked in the past or reasonable schedules of hours to be worked in the future.

5. The question of day as against night work may arise. For example, most of the workers in a community may be working only during the day, whereas a particular employer may be operating three shifts and offering night shift work only. An offer of night work in such circumstances may well raise the question as to whether the hours on the job offered the claimant are substantially less favorable to the individual than those prevailing for similar work in the locality.

Other Working Conditions.--Objections may be made to the work on the ground that working conditions other than the hours or wages are not as favorable to the worker as those prevailing for similar work in the locality. Such working conditions may include guaranteed regularity of employment, amount of annual and sick leave, safety and health protection, welfare programs, seniority rights, etc. "Conditions of work" also include such conditions as may arise as the result of union contracts or innovations by the employer, such as grievance committees and the like.

D. The Freedom-of-Association Standard

The last general statutory standard provides that no benefits shall be denied for the failure to accept new work if, as a condition of being employed, the worker would have to join a company union, or resign from, or refrain from joining a bona fide labor union.

Limitation of Provision.--The phrase "condition of being employed" primarily refers to a condition imposed by the employer and will include conditions imposed by the employer as a result of prior agreements with other employers and labor unions. Thus, where the employer has

a closed shop agreement with a union, the observance of union membership rules becomes a condition of being employed. It is not usually held to refer to instances where the claimant's own union, having no relationship with the employer, would compel him to resign were he to accept the work offered him.

"Condition" of being employed maybe distinguished from the "results" of being employed. The "results" of being employed include violation of rules of the union to which the claimant belongs resulting from his accepting the particular offer of work. The benefit decisions and court cases provide a number of reasons for thus distinguishing between the two. It is often said that the claimant's membership in a union at the time the work is offered him is his personal affair, and his desire to abide by his unions rules which may provide the reason for his not accepting the offer of work is also his personal affair. It is often pointed out that an outside union may change its rules and thus affect the application of the law. Particular rules of unions may be considered to be in violation of national policy or not consistent with the best economic theory and practices.

Other reasons, however, may be behind the distinction between "conditions" and "result" of being employed. The bill which was presented to the Congress of the United States and which eventually became the Social Security Act, originally referred to protection from disqualification of the worker "if acceptance of such employment would either require the employee to join a company union or would interfere with his joining or retaining membership in any bona fide union." (Underlining supplied.) This language was later changed to its present form: "if as a condition of being employed . . ." The original phrase "acceptance of such employment" more clearly encompasses refusals by the worker of work which, if he accepts, will cause expulsion from the union of which he is already a member. By contrast, the present language seems designed merely to prevent unemployment compensation from aiding the efforts of some employers attempting to disrupt or destroy already existing union relationships.

But even though the workers refusal of the work because of the resulting violation of his union's rules is not protected under this particular standard, the violation involved in his accepting the work may make the work unsuitable, or he may have good cause for refusing it. (See section III, below.)

III. VARIABLE CRITERIA

A. Introduction

Most State laws provide additional protection to the claimant who refuses to apply for or to accept an offer of work. This protection is generally expressed in two ways: before a disqualification maybe imposed (1) the work must be suitable, and (2) the worker must lack good cause for refusing it.

Distinction Between Suitability and Good Cause.-- It has often been suggested that "suitability" should be confined to working conditions and "good cause" to the claimants personal reason for refusing the work. In general, this distinction is apt, although in the application of particular factors in actual cases it is difficult to draw a clear line of distinction between "suitability" and

"good cause." The discussion in this section, therefore, attempts no distinction between the two ideas. For purposes of a general statement, they may be considered as two different sides of the same idea, as expressed in the following paragraph.

Purpose.-- Without reference, then, to the particular meaning of "suitability of work" and "good cause," it may be said that their purpose is to prevent disqualification if the refusal is reasonable; that is, if the average worker, similarly situated to the claimant, would refuse the job. Although the same phrase "good cause," appears in many voluntary-leaving disqualification provisions and in work-refusal disqualification provisions, the phrase may have different meaning depending upon its context. For a more complete discussion of the application of the phrase "good cause" in voluntary leaving disqualification provisions, see the Principles Underlying the Voluntary-Leaving Disqualification.

Facts To Be Considered.-- To determine whether a disqualification should be imposed for a work refusal, there should be an examination first of the actual conditions of the job offered, then of the claimant's reasons for refusing the work, whether these reasons refer to the working conditions or not.

Work Refusal and Availability.-- Despite the fact that a claimant may refuse a job on a reasonable basis, his reason for refusal may indicate that he is not available for work. Thus, a claimant who refuses a job because of illness or illness in the family would appear to be acting reasonably; nevertheless, it may also be determined that during the course of the illness he is detached from the labor force. (For a closer examination of the effect of such refusal upon a holding of availability, see the Principles Underlying Availability.)

Statutory Factors.-- Many State laws cite specific factors which are to be considered in determining the suitability of the work. The factors usually include: the degree of risk involved to the worker's health, safety, and morals; his physical fitness and prior training; his experience and prior earnings; length of unemployment and the prospects for obtaining work in his customary occupation; and the distance of the available work from his residence.

1. The laws do not specifically state that they shall be the only factors considered in the determination. In fact, a number of State statutes provide specifically that other factors may be considered. Many other factors may enter into the determination. Some of these will be discussed below.

2. The laws usually say that these factors "shall" be considered. This does not mean consideration of factors which are not pertinent to the case. It does mean that the determination may not be based on one factor alone when others require consideration.

3. From case to case, and depending upon local and general labor force and labor-market conditions, the weight accorded any one particular factor may vary.

Many of the factors discussed below are so well integrated that they should be considered together. Because different fact situations may require varying combinations of the factors with

varying weights applying to each factor, discussion of the factors in terms of particular situations would be very lone and likely to be confusing. The factors, therefore, are considered below separately and only some of the considerations usually involved in applying those factors in their application are discussed.

B. Period of Unemployment

The main purpose of this factor is to stress the need to provide a reasonable period in which workers, without fear of disqualifications, may try to obtain employment which meets their reasonable standards. Although this factor is usually considered in connection with offers of jobs unlike those the claimant customarily has had or hopes to obtain, it may be applied in connection with offers of jobs in claimant's usual occupation where the claimant hopes to obtain either a different type of job or one under more favorable conditions. It is not, however, a factor to be considered by itself. To determine whether the claimant should be given more time to secure acceptable work, his prospects of obtaining the work, the difference between the offered work and his former job or desired work, and the suitability of the offered job in the light of his training, experience, and circumstances should all be considered.

Considerations.-- The period afforded to obtain acceptable employment should vary with each claimant in the light of the particular circumstances. The following is a short and nonexclusive list of the circumstances and considerations which may be involved in the use of this factor:

1. Whether the job offered claimant is in his customary occupation

2. Prospects of other work in his customary occupation

3. Seniority rights in customary occupation

4. Prospects of other work in another occupation that the claimant may find more acceptable

5. Whether longer or shorter periods of unemployment are customary in the claimant's occupation, for example, length of slack seasons

6. Whether the claimant has been in the market for a job long enough to be reasonably aware of his prospects for acceptable employment

7. Distance to the offered job, transportation difficulties, moving expenses, etc.

8. State of labor market in general

9. Nature of his skill

C. Prospects for Obtaining Work in His Customary Occupation

This factor raises several questions: The meaning of "prospects" and "customary occupation" and the application of these phrases.

"Prospects."--Prospects of obtaining work may include: (1) a definite offer and acceptance of an actual job to begin at a definite time; (2) a definite promise of a job although the date when the claimant will go to work is a mere estimate by the employer; (3) an indefinite statement by the employer that he may have work for the claimant; (4) statement by employment service personnel; (5) general knowledge that jobs will soon be available in the industry; and lastly (6) hearsay evidence that jobs may soon open with a particular employer. Since the purpose of unemployment compensation is to tide the claimant between jobs, a claimant who has reasonable prospects of a job may refuse other less acceptable jobs with good cause. In general, the more definite the prospect, the more reasonable the claimant's decision to wait for the job. But, in particular cases, the workers relations with the employer, or labor conditions and customs in the trade may be such, that an indefinite statement from the employer may be almost as definite as an actual job offer; for example, a statement by the employer with whom the worker has seniority rights protected by union contract that operations will begin on or about a certain date. All the circumstances, therefore, surrounding the work prospects must be examined in order to determine whether they are definite enough to warrant the worker's refusal of a job not as favorable or as acceptable to him.

"Customary Work."--The phrase "customary work" has no clear and definite meaning. In view of the fact that these factors serve as a protection from disqualification, and that the worker may have skills usable in various occupations, it seems preferable to apply "customary work" to have a broader meaning than merely the occupation in which the claimant has ordinarily employed. It may well include work which the claimant has been accustomed to do or which he can easily learn in view of his past and present skills and which he is hoping to obtain. This factor maybe used against the claimant; as, for example, when work he does not want is held suitable for him because it is his "customary work." In such cases, it is more in keeping with the purpose of the law to hold that any appreciable difference from his usual work brings the job out of the class of "customary work."

Purpose of the Factor, "Prospects of Obtaining Work. "--This factor carries out the basic idea of safeguarding the workers economic status: It is desirable to pay benefits to the claimant whose prospects of a job in his customary occupation are good. We are here helping him to get work which may utilize his highest skills, in which he may have accumulated seniority rights, which he may find more congenial and in which, for these reasons, he may do a better job and find more permanent employment. On the other hand, if the workers prospects are not good, as for example, where technological changes have made demand for his skills highly improbable, he may be expected to shift to other kinds of work within a reasonable period, work which is closely related to his customary work.

Considerations.-- The more important considerations to be borne in mind in applying this factor are listed below:

1. The definiteness of the prospects for a definite job or jobs in the industry.

2. The length of the period claimant must wait before the job he expects to get materializes.

3. The desirability of the job offered claimant as compared with the ones for which .he is holding himself available.

4. The relationship between the claimant and the employer with whom the claimant expects to work. These would include the promises made by the claimant to go to work, the losses of seniority and other similar rights in the employer's plant involved in his seeking work elsewhere, etc.

5. The length of the claimant is unemployment.

6. The length of time the claimant has already waited for the job.

D. Prior Training and Experience

Purpose.--The main purpose of this factor is to prevent downgrading of the claimant's skills. In applying this factor, the question is not whether the claimant is able to perform the work but whether it requires the maximum utilization of the claimant's skill. Ideally, the job should make the maximum use of the claimant's highest skill, but a modification of this policy is required if his skills is not in demand either during very long seasonal slack or because of technological changes. In these cases, lack of prospects of customary work should be given more weight. In the application of the factor, consideration should be given to the effect of the worker's acceptance of an offered job at less than his highest skill upon his future prospects of work at his highest skill. A special type of case is the refusal of a job because acceptance will result in penalties by or expulsion from claimants union. Such action by the union may seriously affect claimants future work prospects. Phrased differently the question is not whether the claimant is fitted for the job, but whether the job is fitted to the claimant.

This factor like most of the other factors, should be applied in conjunction with them. For example, if the claimant has been unemployed for a long time and prospects for work in his usual occupation are slim or nonexistent, he may reasonably be expected to take work not exactly in line with his prior training or experience; but even in this event, he should be expected to take, of the work available, that which is closet to his prior training and experience. However, before the claimant is disqualified for refusing a job beneath his highest skill, the workers for whom that lower-skilled job represents the job for which they are best fitted should be considered. A worker should not be expected to take a lower-skilled job when there are many other workers who would use their highest skills at it. Doing otherwise would result in downgrading of large classes of workers.

Considerations. - Some of the questions most often involved in the application of this factor include:

1. Quality of the skill and the degree of specialization required by the offered job as compared with the claimant's ability and present skills.

2. The investment of time and money in claimant's acquisition of skills and economic status, for example, as the result of special training

3. The possible impairment of claimant's skill, for example, a job which might impair claimants dexterity in handling precision instruments

4. The effect of claimant's acceptance of the job upon his future prospects of work utilizing his best skills; this may well include the result of union expulsion if acceptance of the offered work is in violation of a union rule.

5. Length of unemployment

6. Prospects of work utilizing the claimant's prior training and experience.

E. Prior Earnings

Purpose.--The purpose of this factor is to protect the claimant's wage status--the wage claimant has been able to command, and can now command, by dint of his experience and skills. One of the criteria often used by employers in determining whether the claimant is "worth" the wage the employer is ready to pay is the workers former wages. In addition, there is a definite link between his former earnings and his standard of living. Acceptance of a job at a material cut in pay may result in serious inroads in this standard of living.

Meaning.--The proper application of this factor depends on what is considered to be the claimant's "prior earnings."

1. The word "earnings" refers not only to the pay received on a weekly, monthly or annual basis, but, in addition, to the wage rate per piece or hour received.

2. Generally, the "prior" earnings are those must recently received. This is especially so if the claimant has been receiving his most recent earnings for a substantial period of time. However, if the worker's most recent earnings cover a brief period, other indications should be sought to determine whether or not the claimant is in a position to command such earnings. For example, a claimant, after attendance at a special course, may have been able to obtain a job paying wages considerably above those he formerly received. If he was laid off after earning such higher wages for only a short time, such most recent earnings need not be considered "prior earnings," unless it is determined that they represent his present earning ability, the wage or earnings he is in a position to command. If the worker is in a position to command such higher earnings, it is inequitable to the claimant to consider only the earnings received prior to the course. Generally, in two situations, the claims deputy or the administrative tribunal may properly go beyond the most recent earnings in determining "prior earnings." Other than the most recent earnings maybe examined: (a) where the claimants most recent earnings are not significant; that is, although the earnings are high, they have been received for so short a period or they have been paid under such conditions that is is clear the worker cannot reasonably command such earnings regularly; or

(b) when other than his most recent-earnings are higher and indicate, in view of the claimant's experience and training, that he may command such higher earnings at the present. In cases of doubt, use of the higher earnings is preferable.

Considerations.-- Some of the considerations in the application of this factor are:

1. In comparing the claimant's prior earnings with wages offered him, the fact that the claimant may receive entrance wages for a brief period should not generally be given much weight unless he is entitled by dint of skills and prior earnings to receive a higher rate. But, a comparison between prior earnings and entrance wages is justified if a substantial period must elapse before the entrance wages will be raised to the wage rate paid trained workmen.

2. In comparing claimants prior earnings with the wages offered him, not only the wage rate but weekly or monthly earnings should be compared.

3. The general level of wages and commodity prices in the market may affect the use of the prior earnings factor. If the wage level is generally falling so, that claimant's skill and experience cannot command the same earnings he received before, then his prior earnings may be "adjusted" downward accordingly. Similarly, an upward adjustment may be made if the wage scale is generally rising. All these, however, should be considered together with the claimant's prospects of obtaining the wages desired in the existing labor market.

4. Workers will try to obtain jobs paying wages somewhat equivalent to their prior earnings in order to enable them to fulfill the responsibilities incurred while receiving such earnings, in order to enable them to meet the demands of their customary standard of living. In determining the weight to be given to the factor of "prior earnings," objections by the worker to the offered job on the ground that the wages will not permit him to maintain his responsibilities should be considered in the light of length of unemployment and prospects for work at his customary occupation. Thus, if it is probable that the claimant may soon obtain a position with wages commensurate with his prior earnings so that he will be able to continue maintaining his responsibilities, we may assume that the job offered him at lower wages is not suitable. The evidence of the effect of the wages paid in the offered job on claimants ability to fulfill his responsibilities, however, should not be so detailed and minute as to make this a "means" test. This consideration is in line with the underlying purpose of unemployment compensation to cushion the shock unemployment may have upon the claimant's standard of living arid to weaken the degrading effect it may have upon his bargaining ability in the labor market.

5. Generally, if labor-market conditions have so changed that tire prospects of obtaining wages commensurate with prior earnings are slight, the worker should be given a reasonable time, the period differing with the circumstances of each case, to adjust himself to the new conditions.

6. Below, in summary, are a few of the considerations in applying the "prior earnings" factor. Some of these have already been discussed in this paragraph.

(a) Prospects for employment which will yield prior earnings

(b) Length of unemployment

(c) Effect of the lowered-wages on the claimants future prospects of commanding wages substantially equivalent to his prior earnings

(d) Effect of the receipt of wages not in keeping with his prior earnings upon his ability to maintain his financial responsibilities

(e) Claimants ability to command prior earnings at the time his claim is filed

(f) General wage and price movements together with work prospects

(g) If the wages offered are not equal to his prior earnings, probabilities that the wages in the job offered him will be increased to equal the wages he formerly received.

F. Risk to Health, Safety, and Morals

Common Considerations. Although these factors are separate and distinct, a number of considerations apply to all three.

1. In the application of these three factors, protective standards set up in State, Federal, and municipal legislation or regulation should be taken into account. Work which violates any of these protective standards is unsuitable. Such standards, however, provide only minimum protection for workers in general. Work may be found to be unsuitable for any individual claimant because of its deleterious effect on his health, safety, or morals, regardless of the fact that it does not violate particular legal standards.

2. With regard to all three factors, account should be taken of whether the conditions to which the claimant objects are commonly found in similar work in the community and elsewhere, and whether the claimant is and has been accustomed to such conditions of work. If he is accustomed to the particular conditions of work, and if they are common to the industry, his objection on the grounds of the effect on his health, safety, or morals would normally be unreasonable except when he has some special reason for refusing to accept the work. Such special reasons may be those peculiar to the claimant, such as his state of health. Another reason may be that in the past the claimant had accepted these conditions as stop-gap employment because he could not find other more acceptable work. And still another reason maybe that the risks which the claimant incurred on previous jobs may have been partly compensated for, by high wages, and that in the absence of such increased wages on the job offered him, the risks to his health, safety, or morals loom larger.

3. The risks include those indirectly connected with the work itself. Thus, work by a minor at a beer parlor may be unsuitable not because of the risks to the claimants morals directly involved in the work, but because of the risks created by the type of patrons. Similarly,

work on the night shift requiring a young girl to walk to work alone through dark streets of bad repute would be a risk indirectly connected with the work itself which may make the work unsuitable or which would provide her with good cause for refusing it.

4. Many of the questions arising in the application of these factors may sometimes create doubt concerning the claimants availability for work. The effects of the evidence obtained in the application of these factors upon the claimant's availability are considered in the Principles Underlying Availability.

Health.--Health includes both physical and mental aspects. For practical administrative purposes, these should be limited to those attested to by competent evidence.

This factor has two elements:

1. The first is whether the work would affect the health of an ordinarily healthy person, and whether it meets the usual standards of the industry. This may be termed the objective element. Thus, work requiring heavy lifting may be generally suitable for a man, but rarely, if ever, suitable for women.

2. The second is the inability of the claimant to accept the work because his health or lack of prior experience in the occupation are such that were he to accept the work it would adversely affect an existing physical or mental impairment. This may be termed the subjective element. For example, work requiring heavy lifting would not be suitable for a man with a hernia.

3. The total effect of both elements of the factor is that any unreasonable or undue risk to the claimants health makes the work unsuitable.

One of the greatest difficulties involved in the application of this factor is that of obtaining proper and sufficient evidence.

1. One source of evidence is medial care or medical certificates. Claimant, however, cannot be put to the expense of obtaining such a certificate unnecessarily. Generally, if the claimant has been under medical care he may easily obtain such a certificate without undue expense. The claimant's medical history, not necessarily attested to by medical statements, would also furnish evidence. In addition, the claimants occupational history will be indicative. For example, if the claimant had refused certain types of work because of the possible effect on his health or had resigned from such jobs in the past because of their actual effect on his health, such evidence would be considered in determining whether the work will have a deleterious, effect upon his health.

2. The weight to be given to approval of working conditions by health inspectors is considered under Safety below.

Safety.--As Health, this factor also has two elements:

1. The first, the objective element, is whether the work would be unduly dangerous to the ordinary worker and whether the safeguard meet the standards common to the industry.

2. The work itself may be such that the particular claimant, because of a personal characteristic or disability, or lack of prior experience in the work, may more easily incur an injury than the ordinary worker. For example, welding on structural steel work high above the street may be unduly dangerous for an inexperienced claimant.

Health and safety conditions, particularly in industrial establishments, are often subject to approval by a Federal, State, or local inspector. Such determinations are confined to whether or not the working conditions are unduly injurious to all workers in general; they are not intended as a test of whether the working conditions are unduly injurious for any particular worker. If such an inspector has disapproved the conditions of work, then the work may be presumed to be unsuitable for all workers. Conversely, approval by an inspector will generally meet the test of the objective elements described above, but will not indicate whether the work constitutes an undue risk to a particular worker.

Morals.--In addition to protection from dangers directly to the workers morals, this factor may refer also to the risk to his moral reputation.

G. Distance

This factor is applicable to jobs requiring traveling from the worker's home to the job as well as jobs requiring the claimant to move to another locality.

Commuting.--In general, a reasonable time should be given the claimant before he is expected to accept work requiring traveling of substantially greater distances than he or similar workers are accustomed to or to accept work at his usual distance but at reduced wages making the cost of transportation of greater importance. Whether or not the worker is expected to accept work requiring the traveling of substantially greater distances or at the same distance at less pay will depend not only on the actual distance involved, but also on the length of his unemployment, the permanence of the work offered, the prospects of and his willingness to accept jobs under more favorable traveling conditions than is customary in other acceptable occupations, the wages to be paid to the claimant compared with his former wages, the time and cost involved in travel, effect on domestic and personal circumstances, etc. Thus, ordinarily, work at distances which the claimant has customarily traveled and at cost which he has customarily borne, or work at distances and involving traveling costs which the majority of other workers similarly situated to the claimant would not object to, do not make the work unsuitable. On the other hand, a substantial increase in the cost of transportation, even if the wages may be equal to those formerly earned, may, under the particular circumstances of the case, make the work unsuitable.

Moving to New Locality.-- Occasionally, offers of work require the claimant to move from one locality to another. In determining whether such work is suitable or whether good cause exists for its refusal; the length of the claimants unemployment, the cost of moving his belongings from one community to another, difficulties of severing his ties to the community such as selling his

home, the possibility of customary and other acceptable work in the present locality, housing in the new community, permanence of the offered work, arid his former experiences in previous employment such as traveling and moving long distances to accept work, are all considerations to be weighed. A claimant should be permitted more time to find work close to his home before he is expected to move to a different locality than that given him before he is expected to accept work within commuting distance of his home.

Considerations.--The considerations ordinarily involved in the application of the factors of distance are:

1. Claimant's experiences traveling distances to former work
2. Effect of claimant's acceptance of a job on his personal and family circumstances.
3. His prospects of closer and more acceptable work
4. Housing and living conditions in the new locality, including accommodations for his family
5. Travel time involved
6. Transportation costs
7. Transportation difficulties
8. Length of unemployment
9. Permanence of offered work

H. Other Criteria

General.--Determination of whether work is suitable or whether the claimant has good cause for its refusal requires consideration of all the facts in the case. Often reasons for refusing work are given by claimant which are not covered by the criteria already considered. In weighing these reasons, just as in weighing the factors already considered., the over-all test is whether the claimant has acted in refusing the work as the ordinary worker would if placed in the claimants shoes. In the paragraphs below, some of the factors often raised by claimants but not specifically mentioned in State laws are very briefly considered. These factors, of course, are to be considered in conjuration with the factors already discussed above.

Domestic Responsibility.-- Many of the factors considered above involve domestic circumstances only indirectly. Many refusals, however, are based directly upon limitations arising from domestic responsibilities. The most usual example is that of a claimant who must refuse work during certain hours because of conditions at home. A clear--cut distinction in such cases needs to be made between the claimant who is unavailable for work and the one who has

good cause for refusing the work. If the claimants actions limiting the hours during which he will accept work are reasonable, judged from the standards the ordinary worker would use, the worker will have had good cause for refusing work-outside these hours. He may, nevertheless, be unavailable for work. For a discussion as to whether these claimants are unavailable for work, see the Principles Underlying Availability.

Offers of Reemployment.--Sometimes a claimant will refuse a job because it entails returning to a former employer with whom his relationships in the past were unpleasant. All the surrounding circumstances of this relationship should be taken into account in determining whether the claimants refusal of an offer of work by his former employer is reasonable. For a detailed discussion of this situation, see section 4555, part 2, volume 2 of the Guide.

Offers During Labor Disputes.--Offers of new work to positions vacant because of labor disputes are covered, of course, by section 1603 (a) (5) (A) of the Federal Unemployment Tax Act, and the similar provisions in the State unemployment compensation law (see sec. II. B. above). Sometines, however, employers may offer the former or similar job to workers unemployed because of a strike. The question then arises as to whether these jobs are unsuitable, or whether good cause for their refusal exists, simply because of the workers' connection with the dispute. A determination in each case as to whether the worker should be disqualified for refusing the job may, but need not, involve weighing the issues involved in the dispute. The purpose, in part, of the State provisions similar to section 1603(a)(5)(A) of the Federal Unemployment Tax Act, and of the labor--dispute disqualification in State laws, is to prevent the unemployment compensation program from interfering with industrial relations during a dispute and to avoid the necessity of determining which of the parties is "right" or "wrong." Where the workers to whom the jobs have been offered are covered by the labor-dispute disqualification, the preferable view would be that their unemployment is covered by this particular disqualification and they are not subject to the suitable-work provision for accepting or refusing work offered them by the employer. Where the labor--dispute disqualification has not been imposed, or has expired, it might be said that in view of the policy that the unemployment compensation agencies are to be neutral during labor disputes, workers who refuse jobs vacant because of a dispute do so with good cause since acceptance will have the effect of either bolstering or weakening the position of either of the parties.

Union Rules and Conditions.-- Many refusals of work are based on alleged violation of union rules if the worker were to accept the job. Sometimes these violations would be followed by expulsion or forced resignation of the worker from the union. In many such cases, the suitability of the work and good cause of its refusal may be considered under the factors already discussed above; and in such cases, it may also be found that because of the difference in training or experience required, the difference in wages, the prospects the worker has of working in his normal unionized occupation, etc., that he would have good cause for refusing such offers. However, no general recommendations are here made, for the present, specifically applicable to job refusals based on union regulations alone.